THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.31859 of 1997

Dated: 11.07.2006

Between
M/s.K.Venkateswarlu & Co.,
Rep., by its Managing Partner
K.Venkateswarlu.

…..Petitioner

and

1.The State of Andhra Pradesh, rep., by its
Prl.Secretary, Irrigation & CAD
Department, Secretariat, Hyderabad.
and another.

….Respondents

THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.31859 of 1997

ORDER:

This writ petition is filed seeking a Mandamus declaring the action of the respondents to recover an amount of Rs.84,695/- alleged to be due towards interest of mobilization guarantee in agreement No.ICB/AB-10/88-89, dated 19.12.88 from the bills of agreement No.5/96-97/CCH, dated 30.1.1997 as arbitrary and illegal.

It is the case of the petitioner that it is a registered special class contractor in the State of Andhra Pradesh. The World Bank package No.C3-04 to execute the work of construction of Kakatiya canal from 234.00 Km to 250.360, Balance Earch Work, E & F of Embankment, Lining and Construction of structures, was awarded to the petitioner vide Agreement No.ICB/AB-10/1988-1989, dated 19.12.1988. The said work was commenced from 1.2.1989 and the contract period has expired by 31.01.1992. However, the said work could not be completed within the stipulated period of 36 months, due to the lapses and the failure of the employer in discharging his contractual obligations expressed in the Agreement conditions. Finally the said contract work was cancelled and the petitioner was expelled from the contract work w.e.f. 7.2.1992. Aggrieved by the same, the petitioner filed O.S.No.41 of 1992 on the file of the

learned Principal Subordinate Judge, Warangal. Later, the Government of Andhra Pradesh issued G.O.Ms.No.137, Irrigation & CAD (Project Wing, SRSP-II) Department, dated 22.06.1993 and cancelled all the works of SRSP and SRBC. The balance work including the work entrusted to the petitioner was re-tendered. Therefore, the petitioner quantified the claims against the Government and filed civil suit being O.S.No.69 of 1995 on the file of the learned Principal Subordinate Judge, Warangal claiming an amount of Rs.5,20,46,000/- The said suit is pending for trial. While so, the present impugned notice has been issued for recovery of an amount of 84, 695/- from subsequent bills under the present agreement, in the event of his failure to remit the said amount. Hence, this writ petiton.

It is further asserted by the petitioner that this Court in WA No.271 of 1994 held that the amounts due under one contract cannot be recovered from the bills of another contract.

A detailed counter affidavit has been filed on behalf of the respondents. It is asserted that an amount of Rs.84,695/- which is sought to be recovered under the impugned proceedings has already been recovered by them. The petitioner was expelled from the work on 7.2.1992 and commenced again on 31.1.1997 in the re-tender of the very same work. During this period, there were no bills to be paid to the petitioner. Therefore, the recovery is sought to be made under the present contract.

In view of the fact that the amounts sought to be recovered have already been recovered and the suit is pending in this regard, no cause survives for adjudication under Article 227 of the Constitution of India. However, this will not preclude the

petitioner from working out his remedies available under law in the pending O.S.No.69 of 1995 before the Court below.

_____

11.07.2006

rkk